

(1973) 04 CAL CK 0009
In the Calcutta High Court
Case No : Civil Rev. No. 2264 (W) of 1967

Savitri Motor Service Pvt. Ltd.	Vs	APPELLANT
State of West Bengal		RESPONDENT

Date of Decision : 11-04-1973

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 2, 36

Citation : (1973) 2 ILR (Cal) 470

Hon'ble Judges : Chittatosh Mookerjee, J

Bench : Single Bench

Advocate : Amal Chandra Roy and Dipankar Das Gupta, for the Appellant; Ramen Banerjee, for Workmen, Phanindra Kr. Sanyal and Narayan Banerjee, for the Respondent

Judgement

Chittatosh Mookerjee, J.—The Third Industrial Tribunal, West Bengal, by its award which was published on October 12, 1967, declared that the refusal of employment to the Petitioner's workmen Dwarik Shaw and Narendra Nath Giri was illegal and unjustified. The Tribunal directed the Petitioner company to reinstate both of them with all back wages and other allowances, if any, since June 20, 1964.

2. Mr. Amal Chandra Roy, appearing on behalf of the Petitioner company, has submitted that the said award of the Third Industrial Tribunal is illegal and without jurisdiction. In the first place, Mr. Roy has contended that the dispute in question is an individual dispute and not an industrial dispute and accordingly, reference made by the State Government u/s 10(1) of the industrial Disputes Act, 1947, was invalid. The second submission made on behalf of the Petitioner is that the Tribunal did not afford reasonable opportunity to the Petitioner company to contest the said case inasmuch as the Tribunal did not grant adjournment of the case on August 3, 1967. There was thus, according to the Petitioner company, violation of the principles of natural justice. Lastly, it has been contended that, even assuming the Tribunal had acted within its jurisdiction by

ordering reinstatement of" the two workmen concerned, it should not have awarded full wages to the workmen as there was evidence that these workmen had been working elsewhere.

3. In my view, there is no substance in the contention that the reference u/s 10(1) was incompetent and that the dispute in question was not an industrial dispute. The evidence in this case is that the Petitioner company had three employees including the two workmen concerned at Barrackpore and rest of their employees were serving under them at Burdwan. All the three employees including the two workmen concerned were members of the Barrackpore Bus Employees' Union. The said Barrackpore Bus Employees' Union had sponsored the dispute and had represented the two workmen concerned in the conciliation proceeding which preceded the reference. The Petitioner company had addressed communications to the said Bus Employees' Union thereby impliedly recognising their status as a representative body on behalf of the two workmen concerned. Mr. Banerjee on behalf of the Respondent No. 3 has also drawn my attention to the fact that the claim of the Barrackpore Bus Employees' Union in its written statement filed before the Tribunal that it was the representative body of the Bus Employees of Bus Syndicate, Barrackpore, was not traversed by the Petitioner company in its written statement filed before the Tribunal.

4. The decision of the Supreme Court in the *Bombay Union of Journalists and Ors. v. The Hindu, Bombay and Anr.* (1962) 2 S.C.J. 107 does not support the contention of the Petitioner on the first point. Mr. Roy had relied upon the observations of Shah J., as he then was, in the passage which is as follows:

The dispute, in the present case, being prima facie an individual dispute, in order that it may become an industrial dispute, it had to be established that it had been taken up by the union of employees of "The Hindu", Bombay, or by an appreciable number of employees of "The Hindu", Bombay. Counsel for the Appellant contended that the dispute was supported by the Bombay Union of Journalists of which Salivateeswaran was a member and that, in any event, it was supported by Venkateswaran and Tiwari, who were the only other employees in this establishment. He also contended that, in any event, the dispute having been taken up by the Indian Federation of Working Journalists, after it was referred to the Tribunal, it had become an industrial dispute.

5. Mr. Sanyal appearing on behalf of the State has, however, drawn my attention to the later Supreme Court decision in *Workmen of Dharampal Premchand v. Dharampal Premchand* (1965) 1 L.L.J. 668 (673-74). Gajendragadkar J., as he then was, who delivered the judgment of the Court, at length dealt with and explained the aforesaid passage in the judgment of Shah J. as in *Bombay Union of Journalists and Ors. v. The Hindu, Bombay* (1962) 2 S.C.J. 107. I can do no better than to quote the following passage from the judgment of Gajendragadkar J. in *Workmen of Dharampal Premchand v. Dharampal Premchand* (1965) 1 L.L.J. 668 (673-74):

It is well-known that in dealing with industrial disputes, industrial adjudication is generally reluctant to lay down any hard and fast rule or adopt any test of general or universal application. The approach of industrial adjudication in dealing with industrial dispute has necessarily to be pragmatic; and the tests which it applies and the consideration on which it relies would vary from case to case and would not admit of any rigid or inflexible formula. There is no doubt that the limitations introduced by the decisions of this Court in interpreting the effect of the definition prescribed by Section 2(k) of the Act were based on much pragmatic considerations. It may also be conceded that if the dismissal of an individual employee working in an establishment in Delhi is taken up by the union of workmen in a place away from Delhi that would clearly not make the dispute an industrial dispute. Section 36 of the Act, which deals with the representation of parties incidentally suggests that the union which can raise an individual dispute as to a dismissal validly, should be a union of the same industry. Generally, it is the union of workmen working in the same establishment which has passed the impugned order of dismissal. But in a given case, it is conceivable that the workmen of an establishment have no union of their own and some or all of them join the union of another establishment belonging to the same industry. In such a case, if the said union takes up the cause of the workmen working in an establishment which has no union of its own, it would be unreasonable to hold that the dispute does not become an industrial dispute, because the union which has sponsored it is not the union exclusively of the workmen working in the establishment concerned. In every case where industrial adjudication has to decide whether a reference in regard to the dismissal of an industrial employee is validly made or not, it would always be necessary to enquire whether the union which has sponsored the case can fairly claim a representative character in such a way that its support to the cause would make the dispute an industrial dispute. "Industry." has been defined by Section 2(j) of the Act and it seems to us that in some cases the union of workmen working in one industry may be competent to raise a dispute about the wrongful dismissal of an employee engaged in an establishment belonging to the same industry where workmen, in such an establishment have no union of their own and an appreciable number of such workmen, had joined such other union before their dismissal. In fact, the object of trade union movement is to encourage the formation of larger and bigger unions on health and proper trade union lines and this object would be frustrated if industrial adjudication were to adopt the rigid rule that before any dispute about wrongful dismissal can be validly referred u/s 10(1) of the Act, it should receive the support of the union consisting exclusively of the workmen working in the establishment concerned.

I respectfully follow the above decision of the Supreme Court and hold that, in the instant case, an industrial dispute existed and not merely an individual dispute as contended by the Petitioners. The Barrackpore Bus Employees' Union was a representative body of the workmen belonging to the industry in question. The three workmen of the Petitioner employed at Barrackpore were members of

the said union. The union had raised the dispute about the refusal by the Petitioner to employ the workmen concerned. In the circumstances, the first contention of the Petitioner fails.

6. I have perused the order-sheet of the Tribunal below. It appears that on April 28, 1967, the Tribunal had allowed the petition of the Petitioner company for adjournment. On June 29, 1967, parties filed a joint petition praying for an adjournment on the ground that the case was likely to be amicably settled. The Tribunal while giving adjournment on August 3, 1967, recorded that if the talks of compromise failed the case would be heard on the said date. The question whether an adjournment should be granted or not was a matter for discussion by the Tribunal. In the instant case I do not find that the Tribunal had acted either arbitrarily or capriciously and in any case, did not commit any error of jurisdiction by taking up the case on August 3, 1967.

7. The Petitioner company had contested the case. It had adduced both oral and documentary evidence. The Tribunal had heard the arguments on subsequent date namely, August 7, 1967, In the circumstances, I am unable to say that there was any denial of reasonable opportunity to the Petitioner company in contesting the case before the Tribunal.

8. The Tribunal has recorded in its award "that it is nobody's case that since; June 20, 1966, they had worked elsewhere." I do not find from the award that the Petitioner had raised the point before the Tribunal below that the workmen concerned after their purported presumption of service had worked elsewhere and they were not entitled to get full back wages. Mr. Roy drew my attention to the evidences of P.Ws. 2 and 3. The question whether these two workmen concerned had served under other employers after their services were purported to have been terminated by the Petitioner company is entirely of fact. The passages upon which the Petitioner sought to place reliance did not satisfactorily establish the length of the Petitioner's alleged employments under other employers and emoluments, if any, drawn by them. If their statements be taken as a whole, it would show that they had remained unemployed after the Petitioner company refused to employ them except for casual engagements. Mr. Banerjee appearing on behalf of the Respondents had also pointed out that in camera dismissal of a workman is found wrongful, it is the normal practice of the Tribunal to order reinstatement. The right to get back wages is a corollary to such an order for reinstatement. In the present case, the materials on record are not sufficient for holding that the Tribunal had committed any error of jurisdiction by not departing from such normal practice regarding payment of back wages to the reinstated employees. In the circumstances, all the contentions fail and this Rule must, accordingly, be discharged. I accordingly, discharge this Rule.

9. There will be no order for costs.

10. The operation of this order is stayed for four weeks. The Petitioner furnished security of a sum of Rs. 5,000 as a condition for the grant of the interim order in

the matter. Now, that the Rule has failed the workmen concerned who have been ordered to be reinstated would be entitled to proceed against the security for realisation of their back wages after two months from this date and only upon the satisfaction of the claim of the workmen concerned such security shall stand discharged.